

MT LEGISLATIVE HISTORY

Chapter 381 1973

Bill H _____ S 134

Original bill & hist. C

H. Committee on Labor & Employment

S. Committee on Labor & Employment

Hearing Date(s) Feb 28 ✓ C

Hearing Date(s) Jan 19 ✓ C

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Jan 24 ✓ C

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Feb 7 ✓ C

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Did this bill originate in an interim committee? Yes No

Committee

Report

MINUTES OF MEETING OF THE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
STATE SENATE

A meeting of the Labor and Employment Relations Committee was called to order by Chairman Siderius, January 19, 1973 at 12:00 Noon, Room 402 of the State Capitol Building.

ROLL CALL: Bertsche, Keenan and Bennett excused. Lowe and McNamer absent.

CONSIDERATION OF SENATE BILL NO. 48:

Chairman Siderius requested permission of the Committee to send this bill to the Judiciary Committee for review. Senator Jensen motioned to send it to Judiciary, Flynn seconded the motion.
MOTION CARRIED.

CONSIDERATION OF SENATE BILL NO. 99:

Senator Lowe has been working with some people on this bill but was not present at the meeting, therefore, further action on this bill was delayed.

CONSIDERATION OF SENATE BILLS NOS. 113 through 138:

This package of bills is scheduled for a public hearing on Monday, January 22, 1973 at 12:00 Noon. If testimony is not concluded on that day, it will be carried over to Wednesday.

Chairman Siderius adjourned the meeting at 12:15 p.m.

SENATOR GEORGE SIDERIUS, CHAIRMAN

January 24, 1973

SB 134: This is an amendment to the present bill reducing the noise intensity level from 100 decibels to 90 decibels, to comply with OSHA. Mr. Carden stated that 60 to 70,000 workers were tested over Montana and that very little occupational deafness was found. Ninety decibels is a reasonable and standardized figure throughout the nation.

SB 135: No material change in the law from 2 years ago. Senator McNamer asked if the Council had thought of getting rid of the present schedule and starting again. Mr. Carden replied that another committee is working on this area and in another year or so we should have some standards to work from.

SB 136: Accounting procedures were changed in the Workmen's Compensation Division to simplify them. This bill amends the present bill to coincide with the accounting system.

SB 137: This is just a housekeeping bill concerning language referring to major and minor dependents. It was suggested that this bill be held with 123, 129 and 130. No objections to the suggestions.

SB 138: Provides for a second injury fund. Had a rather limited one that was of no real value to anyone.

Amendments submitted by Workmen's Compensation Division.

Page 1, line 18, strike "resulting from an injury"

Page 3, line 7, after the word "his" add the following "beneficiaries or"

Chairman Siderius recessed this hearing until 12:00 noon Monday, January 29, at which time SBs 123, 129, 130 and 137 will be discussed.

This Committee will meet on Friday, January 26 at 12:00 Noon.

Senator Bertsche made the motion to adjourn, seconded by Senator Keenan. MOTION CARRIED.



SENATOR GEORGE SIDERIUS, CHAIRMAN

MINUTES OF MEETING OF THE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
STATE SENATE

A meeting of the Labor and Employment Relations Committee was called to order by Chairman Siderius, February 7, 1973 at 12:00 Noon, Room 402, of the Capitol Building.

ROLL CALL: All members present.

CONSIDERATION OF SENATE BILL NO. 419

Senator McKeon appeared before the Committee in support of his bill. Proponents speaking for Senate Bill 419:

Vincent Bosh
George Gordon, Operating Engineers #400
Tom Softich, Labor Standards Division
Sidney Smith, Workmen's Compensation Division
R. L. Rampy, Teamsters
Rep. Larry Fasbender, representing self

Opponents to Senate Bill 419:

J. W. Marlow, Montana Contractor's Association
C. Ingram, Montana Construction Industry Council

A discussion period was held with questions being asked by members.

CONSIDERATION OF SENATE BILL NO. 421

Senator McKeon appeared before the Committee in support of his bill. Proponents speaking for Senate Bill 421:

Jim Murray

Opponents:

P. L. MacDonald, The Anaconda Company
W. M. Kirkpatrick, The Montana Wood Products Association
D. H. Siewert, Montana Chamber of Commerce
Dean Zinnecker, Montana Association of County Commissioners

A discussion period was held by the Committee with questions being asked of the witnesses.

This concluded the public hearing on SB 419 and SB 421.

CONSIDERATION OF SENATE BILL 133:

Senator Bertsche will talk with Jim Carden.

CONSIDERATION OF SENATE BILL 134:

Senator Bertsche moved, seconded by Senator Jensen, that SB 134 DO PASS. Senator Lowe opposing, motion carried.

CONSIDERATION OF SENATE BILL 135:

Senator Keenan moved, seconded by Senator Jensen, that SB 135 DO PASS. Motion carried unanimously.

February 28, 1973

LABOR AND EMPLOYMENT RELATIONS COMMITTEE PROCEEDINGS:

A meeting of the Labor and Employment Relations Committee was held on Wednesday, February 28, 1973 at 10:30 a.m. in Room 428A with Chairman Pat McKittrick presiding. All members were present.

SENATE BILL NO. 131 -- SPONSOR: Sen. Siderius -- in this bill a lot of obsolete language is removed from the penalty codes. Questions followed.

SENATE BILL NO. 132 -- SPONSOR: Sen. Keenan -- this bill will increase the age limit from 21 to 22 years from which benefits can be paid to a full-time student in an accredited school. Questions followed.

SENATE BILL NO. 133 -- SPONSOR: Sen. Siderius -- this puts the Workmens' Comp. Division under the Merit System. Jim Murry, AFL-CIO, said that this bill was not a part of the package made by the Governor's council. Rep. McKittrick presented some amendments proposed by the governor. They make it clear that the administrator is not federally protected.

SENATE BILL NO. 134 -- SPONSOR: Sen. Siderius -- this bill changes the decibel limit from 100 to 92 concerning deafness, in conformance with OSHA. Questions followed.

SENATE BILL NO. 135 -- SPONSOR: Sen. Keenan -- this bill provides for more than 26 weeks of temporary total disability compensation benefits in cases of permanent injury or non-scheduled injury. Questions followed.

SENATE BILL NO. 136 -- SPONSOR: Sen. Siderius -- the bill clarifies the Workmens' Comp. Division account within the general fund.

SENATE BILL NO. 137 -- SPONSOR: Sen. Siderius -- another house-keeping bill, deleting language in reference to major and minor dependents not residing in the U.S. Questions followed.

SENATE BILL NO. 138 -- SPONSOR: Sen. Siderius -- this is one of the most important bills in the package. It provides for the rehabilitation of injured workmen. It raises money for the fund. Jim Murry, AFL-CIO, -- the present situation works an unfairness on both employees and employers. Employers are reluctant to hire disabled persons. This act would establish a separate fund from which a worker could be paid. Joe Rossman, Montana Teamsters Council -- wishes to add the Council's support of the bill. Questions followed.

Rep. McKittrick was excused for a few minutes; Rep. Lombardi took over, and the following action took place:

SB # 131: Rep. Turner moved, Colberg seconded that it BE CONCURRED IN. Motion carried unanimously.

SB # 132: Rep. Colberg moved that it BE CONCURRED IN. Motion carried unanimously.

SB # 133: Rep. Hodges moved that it BE CONCURRED IN AS AMENDED by the Governor. Discussion followed, Rep. Lee seconded the motion. Motion carried unanimously.

SB # 134: Rep. Lee moved that it BE CONCURRED IN. Colberg seconded it; motion carried unanimously.

SB # 135: Rep. Ellerd moved, Lee seconded, that it BE CONCURRED IN. Motion carried unanimously.

SB # 136: Rep. Tierney moved, seconded by Lee, that it BE CONCURRED IN. Motion carried unanimously.

SB # 137: Discussion took place. Rep. Turner moved and Colberg seconded that it BE CONCURRED IN. Motion carried unanimously.

SB # 138: Rep. Baeth moved, Tierney seconded, that it BE CONCURRED IN. Motion carried unanimously. (Chairman McKittrick then returned ,)

SB # 123: Rep. Colberg moved, Hodges seconded, that it BE CONCURRED IN. Discussion followed. Motion carried; East opposed.

SB # 124: Rep. Lombardi moved, Tierney seconded, that subsection (7) be reinstated in its entirety. Discussion; motion was then carried with Hodges, Turman and Tierney opposed. Lombardi moved, Colberg seconded, that it BE CONCURRED IN AS AMENDED. Motion carried unanimously.

SB # 125: Rep. Baeth moved, Lee seconded, that it BE CONCURRED IN. Motion carried unanimously.

SB # 126: Rep. Lee moved, Baeth seconded, that it BE CONCURRED IN. Motion carried unanimously.

SB # 127: Rep. Baeth moved, seconded by Turman, that the stricken language on p. 3 lines 19-25 be reinstated; discussion followed. Motion carried unanimously. Baeth moved to amend on page 4, lines 21-25 by reinstating the stricken material there-also the first word on p. 5. Seconded by Turman. Motion carried; Bell opposed. Baeth moved, Colberg seconded, that it BE CONCURRED IN AS AMENDED. Motion carried unanimously.

SB # 128: Rep. Hodges moved to reinstate on p. 1, lines 22-24 the material therein. Colberg seconded it; motion carried; East opposed. Hodges moved it BE CONCURRED IN AS AMENDED; Lombardi

Section 24. Governmental entities shall not be liable for punitive damages, attorney fees or interest on any claim allowed under the provisions of this act.

Section 25. In the event no insurance has been procured by the state to pay a claim or judgment arising under the provisions of this act, the claim or judgment shall be paid from the next appropriation of the state instrumentality whose tortious conduct gave rise to the claim.

Section 26. Notwithstanding any provisions of law to the contrary and in the event there are no funds available, the political subdivision shall levy and collect a tax, at the earliest time possible, in an amount necessary to pay a claim or judgment arising under the provisions of this act where the political subdivision has failed to purchase insurance to cover a risk created under the provisions of this act.

Section 27. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

Section 28. No levy of attachment or writ of execution shall issue against any property of a governmental entity for the security or collection of any claim or judgment against any governmental entity under this act.

Approved: March 20, 1973.

CHAPTER NO. 381

An Act Providing for Lowering the Noise Intensity Level from One Hundred (100) to Ninety (90) Decibels in the Occupational Deafness Section of the Workmen's Compensation Act; Amending Section 92-710, R.C.M. 1947; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 92-710, R.C.M. 1947, is amended to read as follows:

"92-710. **Occupational deafness.** Regardless of other definitions of injury and time limitations imposed by this act, there shall be compensation awarded for occupational deafness as follows:

(1) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment. "Noise" means sound capable of producing occupational deafness. "Noisy employment" means employment in the performance of which an employee is subjected to noise.

(a) Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1000 and 2000 cycles per second. Loss of hearing ability for frequency tones above 2000 cycles per second is not to be considered as constituting disability for hearing.

(b) The per cent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1000 and 2000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average 25 decibels or less in the three frequencies, as measured under ISO Standard 1964, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 92 decibels or more in the three frequencies, as measured under ISO Standard 1964, then the same shall constitute and be total or 100 per cent compensable hearing loss.

(c) In measuring hearing impairment the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding 25 decibels an allowance of one and one-half per cent ($1\frac{1}{2}\%$) shall be made up to the maximum of one hundred per cent (100%), which is reached at 92 decibels.

(d) In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five (5). The resulting figure shall be added to the percentage of impairment in the poorer ear and the sum of the two divided by six (6). The final percentage shall be representative of the binaural hearing impairment.

(e) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from non-occupational causes found in the population at any given age, there shall be deducted from the total average decibel loss, one-half decibel for each year of the employee's age over forty at the time of last exposure to industrial noise.

(f) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved

by the use of a hearing aid.

(2) No benefits shall be payable for temporary total or temporary partial disability under this act for loss of hearing due to prolonged exposure to noise.

(3) An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss, shall be compensated at the rate provided in section 92-703.1, not exceeding three thousand five hundred dollars (\$3,500) in the aggregate from all employers. "Time of injury," "incurred such injury," "date of injury" in such case shall be the date of wage loss.

(4) Subject to the limitations herein contained, there shall be payable for total occupational deafness of one ear, forty (40) weeks of compensation; for total occupational deafness of both ears, two hundred (200) weeks of compensation; and for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided.

In cases covered by this subsection, "time of injury," "incurred such injury" or "date of injury" shall be exclusively the date of occurrence of any of the following events to an employee:

(a) Transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;

(b) Retirement;

(c) Termination of the employer-employee relationship;

(d) Layoff, provided the layoff is complete and continuous for one year;

(e) No claim under this subsection shall be filed, however, until six (6) consecutive months of removal from noisy employment after the time of injury except that under subparagraph (d), such six (6) consecutive months period may commence within the last six (6) months of layoff.

(5) The limitation provisions in this act shall control claims arising under this subsection. Such provisions shall run from the first date upon which claim may be filed, or from the date of subsequent death, provided that no claim shall accrue to any dependent unless an award has been issued or liability admitted.

(6) No payment shall be made to an employee under this section unless he shall have worked in noisy employment for a

total period of at least ninety (90) days for the employer from whom he claims compensation.

(7) Any amount paid to an employee under this section by an employer shall be credited against compensation payable by any employer to such employee for occupational deafness under subsections (3) and (4). No employee shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this section for total occupational deafness.

(8) Occupational deafness as herein provided is distinguished from traumatic loss of hearing which is governed by the specific loss schedule hereinabove.

(9) An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by hearing test or other competent evidence, whether or not the employee was exposed to noise within the six (6) months preceding such test, he shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has perviously been paid or awarded.

(10) No claim shall be filed, however, unless the employee is exposed eight (8) hours daily and for a period of at least ninety (90) days as above required to noise intensity levels above 90 decibels.

(11) This act shall become effective January 1, 1974."

Approved: March 20, 1973.

CHAPTER NO. 382

An Act Amending Section 46-232, R.C.M. 1947, Concerning the Licensing of Milk Plants and Dairies.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 46-232, R.C.M. 1947, is amended to read as follows:

"46-232. **Licensing of milk plants and dairies selling milk or cream for public consumption.** It is unlawful for the following *businesses* to operate in the state of Montana without first *obtaining* a license from the *department of livestock, animal health division*:

1. A *dairy* selling milk or cream for public consumption in the form in which it is originally produced.

2. Condensed, evaporated or *powdered* milk plant.